



2008-086

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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June 4, 2008

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Honorable Charles R. Stephens, Attorney
Walker County Civil Service Board
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Civil Service System – Candidates –
Political Activities – Boards of
Directors - Vacancies

A member of the Walker County Civil Service Board ("Board") vacates his or her position on the Board at the time he or she files qualifying papers for an elective office. The board member's subsequent withdrawal as a candidate for elective office does not reinstate the board member. A vacancy exists on the Board that may be filled by appointment in accordance with section 5 of Act 80-673.

Dear Mr. Stephens:

This opinion of the Attorney General is issued in response to your request on behalf of the Walker County Civil Service Board.

QUESTIONS

Does a sitting board member's qualification for the office of constable vacate his or her office as a member of the Walker County Civil Service Board?

Does the board member's subsequent withdrawal as a candidate for the office of constable reinstate the board member to the Walker County Civil Service Board, or is there a vacancy that must be filled in accordance with section 5 of Act 80-673?

FACTS AND ANALYSIS

Your request states that as of April 8, 2008, board member David Kelly was listed by the Walker County Democratic Party as a candidate qualified to run for the office of constable in Beat 9, and this list was filed with the Walker County Probate Judge. On April 15, 2008, David Kelly withdrew from the constable race.

The Walker County Civil Service Board was created in 1969 by Act 200 and was amended by Act 80-673. 1980 Ala. Acts No. 80-673, 1351. Section 5 of the act, as amended, provides as follows:

Any member of the Board who becomes a candidate for, or is appointed or elected to another public office vacates his office as a member of the Board and the chairman or president of the governing body of Walker County shall forthwith notify the Governor, who shall fill the vacancy as provided in this section.

Id. at 1352.

In a previous opinion, this Office stated that the qualification and running for public office by a sitting board member of the Walker County Civil Service Board caused that person's position to be vacated and the vacancy to be filled by appointment in accordance with the act creating the Board. Opinion to Honorable Charles R. Stephens, Attorney, Walker County Civil Service Board, dated June 23, 2005, A.G. No. 2005-156. Under the facts in that opinion, the board member qualified for office, ran for the office, and his name appeared on the general election ballot.

The facts in this request show that the current board member, David Kelly, withdrew from the race. Thus, your question is whether the filing of the qualification to run for the office vacated the board member's position on the Board and, if so, whether his withdrawal from the race reinstated him to the Board.

This Office has stated that a person becomes a candidate by filing his or her declaration of candidacy with the proper party officer. Opinion to Walker County Civil Service Board, dated March 8, 1984, A.G. No. 84-00200. Thus, Mr. Kelly became a candidate when he filed his qualifying papers with the Walker County Democratic Party. The act states that any board member who "becomes a candidate" vacates his or her office as a member of the Board. Thus, even though Mr. Kelly later withdrew from

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the race and is no longer a candidate, he vacated his position on the Board at the time he became a candidate. There is no provision that allows a board member who has vacated a position to be reinstated to that position simply by withdrawing as a candidate. Accordingly, a vacancy exists on the Board that may be filled by appointment as set forth in the act. There does not appear to be anything that would prohibit the Governor from appointing Mr. Kelly to fill the remainder of the term.

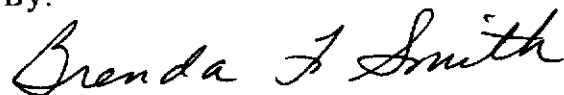
CONCLUSION

A member of the Walker County Civil Service Board vacates his or her position on the Board at the time he or she files qualifying papers for an elective office. The board member's subsequent withdrawal as a candidate for elective office does not reinstate the board member. A vacancy exists on the Board that may be filled by appointment in accordance with section 5 of Act 80-673.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

TK/BFS

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